

**REMARKS**

The Office Action dated April 13, 2009, has been received and carefully noted. The above amendments to the claims, and the following remarks, are submitted as a full and complete response thereto.

By this Response, claims 1 and 17 have been amended to more particularly point out and distinctly claim the subject matter of the present invention. Claims 16 and 18 have been cancelled without prejudice or disclaimer. No new matter has been added. Support for the above amendments is provided in the Specification, at least, on page 15, lines 8-20. Accordingly, claims 1, 5, 17, and 19 are currently pending in the application, of which claims 1 is the only independent claim.

In view of the above amendments and the following remarks, Applicant respectfully requests reconsideration and timely withdrawal of the pending rejections to the claims for the reasons discussed below.

***Claim Rejections under 35 U.S.C. §103(a)***

The Office Action rejected claims 1, 5, and 16-19 under 35 U.S.C. §103(a) as being allegedly unpatentable over Graves (U.S. Patent No. 5,482,245) in view of Yocca (U.S. Patent No. 3,987,996). Applicant respectfully submits that the claims recite subject matter that is neither disclosed nor suggested in the combination of Graves and Yocca.

Claim 1, upon which claims 5, 17, and 19 depend, recites a tree stand. The tree stand includes a fluid reservoir about a tree retaining member including a tree gripping

means. The tree gripping means includes projections. The fluid reservoir includes a cylindrical or frustoconical member being closed at one end thereof by a base. The tree retaining member is connected to the base. The tree retaining member includes a substantially cylindrical hollow member and the tree gripping means includes a plurality of projections arranged on the interior surface of the tree retaining member. The tree retaining member is adapted to retain a tree inserted therein without using any moveable mechanical means in the form of screws or bolts resisting lifting of a tree inserted therein relative to the tree stand. The projections run substantially axially with the tree retaining member and include a sharp or pointed portion arranged in use to at least partially penetrate the trunk of a tree inserted into the tree retaining member.

Applicant respectfully submits that certain embodiments of the invention provide non-obvious advantages. For instance, certain embodiments of the invention relate to a tree gripping means that includes projections that run axially with the tree retaining member. Each projection includes a sharp or pointed portion arranged in use to at least partially penetrate the trunk of a tree inserted into the tree retaining member for enhancing water uptake by the tree through the cuts made by the projections.

As will be discussed below, the combination of Graves and Yocca fails to disclose or suggest each and every element recited in claims 1, 5, 17, and 19, and therefore fails to provide the advantages and the features discussed above. Claims 16 and 18 have been cancelled without prejudice or disclaimer.

Graves is directed to a tree and pole stand. The stand or support includes an outer container, an inner container receivable by the outer container and a plurality of braces connected to the outer container. The support may be placed in a decorative container so that the braces abut the inner wall of the decorative container (Graves, col. 1, line 49, to col. 2, line 29).

Yocca is directed to a combination hassock and Christmas tree holder. A cylindrical housing is decorated to resemble a drum or is upholstered to form a hassock. When the top of the housing is removed, a central hole is revealed. Inside the hassock, is a holder for the trunks of Christmas trees. The trunk can be inserted through the holder and held upright in the device. The holder can be fitted to make the tree stand vertically even though the housing is not on a level floor (Yocca, col. 1, lines 6-13).

Assuming *arguendo* that the description of Graves could be combined with the description of Yocca, the combination of Graves and Yocca would fail to disclose or suggest, at least,

wherein the projections run substantially axially with the tree retaining member and include a sharp or pointed portion arranged in use to at least partially penetrate the trunk of a tree inserted into the tree retaining member,

as recited in claim 1 (emphasis added).

Applicant respectfully submits that neither Graves nor Yocca describe the aforementioned claim features. Graves describes eye bolts 76 used to position a tree or pole within a container 70 (*See* Figure 1; col. 4, lines 33-35). As illustrated in Figure 3,

and described in column 4, lines 61-62, Graves describes that the eye bolts 76 may be tightened *against* the trunk of the tree to center it within the canister 70. Contrary to the Office Action's allegations, Graves fails to mention or suggest that the eye bolts 76 include a sharp or pointed portion, nor does Graves describe that the eye bolts 76 penetrate the trunk of the tree.

Yocca describes springs 30 attached to a cylinder 10. When a tree is introduced into the cylinder 10, the tree flattens the springs 30 towards the inner wall of the cylinder 10, whereby the springs 30 will hold the trunk upright within the cylinder 10. Springs 30 fail to include a sharp or pointed portion, and furthermore do not penetrate the trunk of the tree. Accordingly, the combination of Graves and Yocca would fail to disclose or suggest each and every element recited in claim 1.

As previously discussed above, the projections described for certain embodiments of the invention enhance water uptake by the tree through the cuts made by the projections. One of ordinary skill in the relevant art would have understood that the springs 30 of Yocca cannot enhance the water update into the tree because the springs 30 do not make any cuts into the tree trunk. Furthermore, one of ordinary skill in the relevant art would have understood that the bolts 76 of Graves *may* penetrate the trunk of the tree, but they are arranged at a single point on the tree retaining member, rather than running axially along the tree retaining member, and therefore cannot provide the kind of penetration necessary to enhance water uptake. Furthermore, by placing the bolts 76 at

the top of the tree retaining member of Graves, it is unlikely that water in the tree stand will be taken up into the tree where the eye bolts 76 engage the tree trunk.

Claims 5, 17, and 19 depend from claim 1. Accordingly, claims 5, 17, and 19 should be allowable for at least their dependency upon an allowable base claim, and for the specific limitations recited therein. Claims 16 and 18 were cancelled without prejudice or disclaimer.

Therefore, Applicant respectfully requests withdrawal of the rejections of claims 1, 5, and 16-19 under 35 U.S.C. §101 and respectfully submits that claim 1, and the claims that depend therefrom, are now in condition for allowance.

### CONCLUSION

In conclusion, Applicant respectfully submits that Graves and Yocca, whether taken individually or in combination, fail to disclose or suggest each and every element recited in claims 1 5, 17, and 19. The distinctions previously noted are more than sufficient to render the claimed invention non-obvious. It is therefore respectfully requested that all of claims 1 5, 17, and 19 be allowed, and this present application be passed to issuance.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, Applicant's undersigned representative at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not being timely filed, Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,



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